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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,477	03/01/2004	Kenneth N. Harel	CONTC.64501	9529
27629	7590	03/01/2006	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP			HORTON, YVONNE MICHELE	
200 OCEANGATE, SUITE 1550			ART UNIT	
LONG BEACH, CA 90802			PAPER NUMBER	

3635

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/790,477

**Applicant(s)**

HAREL, KENNETH N.

**Examiner**

Yvonne M. Horton

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

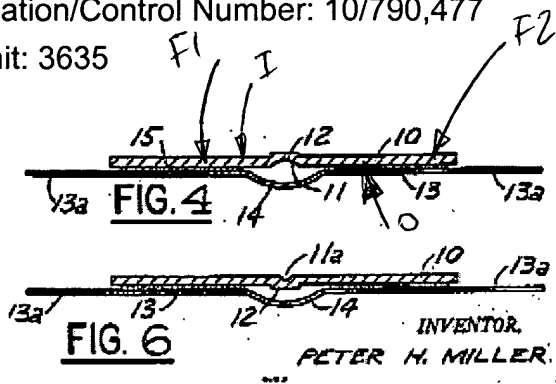
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 39 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 39, it is not clear if "it" is referencing the paper itself or the flap. Clarification and correction is required.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,090,087 to MILLER in view of US Patent #4,863,774 to TUCKER and US Patent #3,201,908 to ARNOLD. MILLER discloses a drywall accessory including an elongate core (10) having inward (I) and outward (O) faces, a corner portion (as at 11 & 12), and at least one flange (F1,F2) projection transversely from the length of the corner portion (as at 11 & 12), see the attachment below. MILLER further includes an elongate paper strip (13) affixed to an outward face (OF) of the core strip and extending from



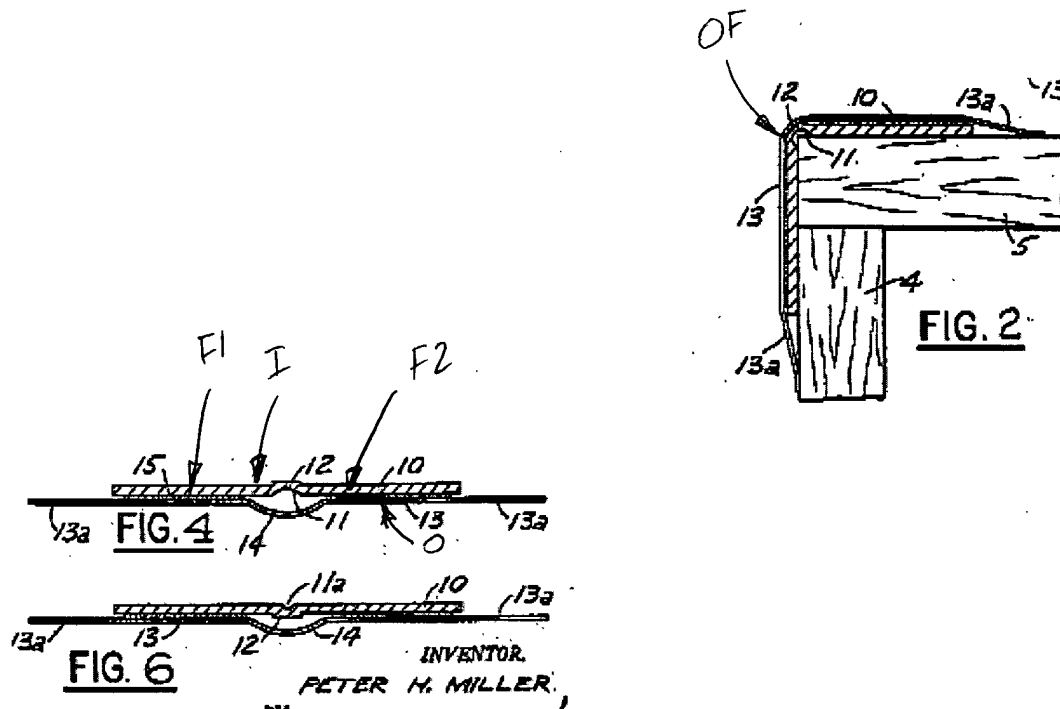
end-to-end thereof, with (13a) forming a flap. MILLER discloses the basic claimed accessory except for including uniform depressions on the flap. TUCKER teaches that it is known in the art to provide the flaps (as at 82) of a drywall accessory with uniform depressions (20,22) in the tape (10). And, ARNOLD teaches that it is known in the art that forming depressions (21,22) and openings (18) aid in improving the performance of plaster therewith. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the flaps of the drywall accessory of MILLER with the uniform depressions of TUCKER or ARNOLD in order to improve flexibility of the drywall member while also aiding in adhesion of the device to the drywall. In reference to claim 32, the depressions (20,22) of TUCKER are uniformly spaced apart across a portion (the entirety) of the flap (as at 82). Regarding claim 33, the drywall accessory is a corner bead wherein the flanges (F1,F2) project transversely from the length of the central/corner portion (as at 11 & 12), and the paper strip (as at 13a) projects transversely from the length of the flanges (F1,F2). In reference to claim 34, the core/corner/central portion is metal, column 2, line 56.

Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,090,087 to MILLER in view of US Patent #4,863,774 to TUCKER

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and US Patent #3,201,908 to ARNOLD. The accessory of MILLER inherently discloses the steps of selecting an elongate core (10) with inward (I) and outward (O) faces, a corner portion (as at 11 & 12), and at least one flange (F1,F2) projection transversely from the length of the corner portion (as at 11 & 12), see the attachment below.

MILLER further includes the step of selecting an elongate paper strip (13) and affixing the paper strip (13) to an outward face (OF) of the core strip and extending from end-to-end thereof, and thereby forming a flap (13a). MILLER discloses the basic claimed



method except for including uniform depressions on the flap. TUCKER teaches that it is known in the art to form uniform depressions (20,22) in the flaps (as at 82) of a drywall accessory. And, ARNOLD teaches that it is known in the art that forming depressions (21,22) and openings (18) aid in improving the performance of plaster therewith.

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Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the flaps of the drywall accessory of MILLER with the uniform depressions of TUCKER or ARNOLD in order to improve flexibility of the drywall member while also aiding in adhesion of the device to the drywall. Regarding claim 36, MILLER discloses the step of selecting flanges (F1,F2) project transversely from the length of the central/corner portion (as at 11 & 12), and the paper strip (as at 13a) projects transversely from the length of the flanges (F1, F2).

Claims 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,090,087 to MILLER in view of US Patent #4,863,774 to TUCKER and US Patent #3,201,908 to ARNOLD. The device of MILLER, as detailed above, is "configured" to mount over the edge of at least one drywall panel (4,5), see figure 2. MILLER, as modified by TUCKER and ARNOLD, details the use of a plurality of laterally spaced ridges (20,22) that are positioned transversely to the core portion (64).

#### ***Allowable Subject Matter***

Claim 39 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 10/19/05 have been fully considered but they are not persuasive.

Regarding the applicant's argument that the examiner has not supported her burden by showing that depressions improve adhesion, she has amended her rejections with a supporting reference.

In reference to the applicant's argument that TUCKER does not teach the function of embedding in cement, this is a method step that is not given patentable weight in apparatus claims. At any rate, TUCKER is only used as a mere teaching of forming depressions is drywall tape. It is the reference of MILLER that would support reasoning behind the "embedding" function. Clearly MILLER, as at 13a, is the portion of the tape that is or would be embedded.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding the applicant's argument that neither MILLER nor TUCKER were provided in the prosecution of US Patent #6,539,680 to KUNTZ, perhaps the references were not available to the examiner at the time of prosecution.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within


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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yvonne M. Horton  
Examiner  
Art Unit 3635  
02/16/06

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600